

AMENDED IN ASSEMBLY AUGUST 15, 2011

AMENDED IN ASSEMBLY JUNE 22, 2011

AMENDED IN SENATE MAY 19, 2011

AMENDED IN SENATE APRIL 28, 2011

## SENATE BILL

**No. 136**

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**Introduced by Senator Yee**

January 31, 2011

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~~An act to amend Section 4217.12 of the Government Code, relating to public contracts. An act to add Section 1720.5 to the Labor Code, relating to public contracts.~~

### LEGISLATIVE COUNSEL'S DIGEST

SB 136, as amended, Yee. ~~Emergency services~~ *Public contracts*: prevailing wages.

Existing law defines "public works," for purposes of regulating public works contracts, as, among other things, construction, alteration, demolition, installation, or repair work done under contract and paid for, in whole or in part, out of public funds. Existing law further requires that, except as specified, not less than the general prevailing rate of per diem wages be paid to workers employed on public works and imposes misdemeanor penalties for a violation of this requirement. Existing law provides that for the purposes of provisions of law relating to the payment of prevailing wages, "public works" includes specified types of construction, alteration, demolition, installation, and repair work.

~~Existing law authorizes public agencies to enter into energy service contracts and any necessarily related facility ground lease on terms that its governing body determines are in the best interests of the public agency, as specified.~~

~~This bill would provide that energy services contracts entered into under the above provisions are public works for purposes of the prevailing wage requirements, as specified.~~ *expand the definition of “public works,” for the purposes of provisions relating to the prevailing rate of per diem wages, to also include any construction, alteration, demolition, installation, or repair work done under private contract that satisfies specified conditions related to energy, as prescribed.*

Because the violation of prevailing wage requirements by local public entities when engaged in these public works projects would result in the imposition of misdemeanor penalties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 1720.6 is added to the Labor Code, to*
- 2     *read:*
- 3     *1720.6. For the limited purposes of Article 2 (commencing*
- 4     *with Section 1770) of this chapter, “public work” also means any*
- 5     *construction, alteration, demolition, installation, or repair work*
- 6     *done under private contract when all of the following conditions*
- 7     *exist:*
- 8         *(a) The work is performed in connection with the construction*
- 9         *or maintenance of renewable energy generating capacity or energy*
- 10         *efficiency improvements.*
- 11         *(b) The work is performed on the property of the state or a*
- 12         *political subdivision of the state.*
- 13         *(c) Either of the following conditions exists:*
- 14             *(1) More than 50 percent of the energy generated is purchased*
- 15             *or will be purchased by the state or a political subdivision of the*
- 16             *state.*
- 17             *(2) The energy efficiency improvements are primarily intended*
- 18             *to reduce energy costs that would otherwise be incurred by the*
- 19             *state or a political subdivision of the state.*

1     ~~SECTION 1. Section 4217.12 of the Government Code is~~  
2     ~~amended to read:~~

3     ~~4217.12. (a) Notwithstanding any other law, a public agency~~  
4     ~~may enter into an energy service contract and any necessarily~~  
5     ~~related facility ground lease on terms that its governing body~~  
6     ~~determines are in the best interests of the public agency if the~~  
7     ~~determination is made at a regularly scheduled public hearing,~~  
8     ~~public notice of which is given at least two weeks in advance, and~~  
9     ~~if the governing body finds:~~

10    ~~(1) That the anticipated cost to the public agency for thermal~~  
11    ~~or electrical energy or conservation services provided by the energy~~  
12    ~~conservation facility under the contract will be less than the~~  
13    ~~anticipated marginal cost to the public agency of thermal, electrical,~~  
14    ~~or other energy that would have been consumed by the public~~  
15    ~~agency in the absence of those purchases.~~

16    ~~(2) That the difference, if any, between the fair rental value for~~  
17    ~~the real property subject to the facility ground lease and the agreed~~  
18    ~~rent, is anticipated to be offset by below-market energy purchases~~  
19    ~~or other benefits provided under the energy service contract.~~

20    ~~(b) State agency heads may make these findings without holding~~  
21    ~~a public hearing.~~

22    ~~(c) Energy service contracts entered into pursuant to this section~~  
23    ~~shall constitute public works projects and comply with Chapter 1~~  
24    ~~(commencing with Section 1720) of Part 7 of Division 2 of the~~  
25    ~~Labor Code.~~

26    SEC. 2. No reimbursement is required by this act pursuant to  
27    Section 6 of Article XIII B of the California Constitution because  
28    the only costs that may be incurred by a local agency or school  
29    district will be incurred because this act creates a new crime or  
30    infraction, eliminates a crime or infraction, or changes the penalty  
31    for a crime or infraction, within the meaning of Section 17556 of  
32    the Government Code, or changes the definition of a crime within  
33    the meaning of Section 6 of Article XIII B of the California  
34    Constitution.